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Person To Contact:

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Date:

January 05, 2011

Revocable =
Trust
Taxpayer =
Date =
QTIP Trust =

CRUT =

Spouse =
a =
b =
c =
Residence =
Entity =
State Statute 1 =
Real Property =
d =
Foundation =

e =
State Statute 2 =
x =

Dear _____ :

This letter responds to a letter from your authorized representative, dated July 12, 2010, and subsequent correspondence, requesting income, estate, and gift tax rulings with respect to the amendment and restatement of Revocable Trust.

Taxpayer created Revocable Trust on Date and amended Revocable Trust six times thereafter. Revocable Trust becomes irrevocable upon Taxpayer's death. Taxpayer intends to amend Revocable Trust to provide for the creation of two trusts upon his death, CRUT and QTIP Trust. The proposed terms of the two trusts are the subject of this ruling request.

QTIP TRUST

Paragraph 15 of Revocable Trust provides that if Spouse survives Taxpayer and is married to, and not separated from, Taxpayer at the time of Taxpayer's death, the trustees shall fund QTIP Trust with assets valued at \$a. The trustees will allocate a portion of the trust assets, \$b, to be held in Fund A of QTIP Trust and will allocate the balance of the trust assets, \$c, to be held in Fund B of QTIP Trust. In funding Fund A and Fund B of QTIP Trust, the trustees shall transfer Residence to be held in Fund A of QTIP Trust and the trustees shall transfer all interests in Entity, directly or indirectly held as part of the trust estate, to be held in Fund B of QTIP Trust. Entity is an LLC wholly-owned by Revocable Trust and holds tangible assets such as automobiles and aircraft.

Paragraph 15 further provides that Taxpayer intends property passing to QTIP Trust to be eligible to qualify as qualified terminable interest property and authorizes the trustees to elect to treat all, part, or none of the trust property as qualified terminable interest property.

Fund A of QTIP Trust

Paragraph 15.1 provides that the trustees may use funds from Fund A to purchase another residence for Spouse in addition to Residence.

Paragraph 15.2 provides that while Spouse is living, Spouse has the exclusive right to occupy and use all residences directly or indirectly held as part of Fund A and any tangible personal property in or about the residences, rent free, for so long as such real or tangible personal property is held directly or indirectly as part of Fund A.

Paragraph 15.3 prohibits the trustees from selling any of the residences, or tangible personal property in or about them, held in Fund A without consulting with Spouse, so long as Spouse is living and competent.

Paragraph 15.4 provides that the trustees have the power and discretion in respect of any residential real property, household furnishings, and other tangible personal property held as part of Fund A to (a) retain such property as a part of Fund A; (b) pay from Fund B, first from income and then from principal to the extent income is insufficient, all of the operating and maintenance expenses in connection with such property; and (c) sell or rent to other persons any residential real property that Spouse has ceased to occupy and to purchase and maintain or rent any other residence for Spouse's exclusive personal occupancy and use, rent free, as the trustees deem advisable.

Paragraph 15.5 provides that if interests in residential and tangible personal property held in Fund A are sold during Spouse's lifetime, the trustees may reinvest the net proceeds of sale in other residential or tangible personal property to be held in Fund A for Spouse's exclusive personal occupancy and use, rent free.

Paragraph 15.6 provides that the trustees may, in their discretion and without the consent or approval of Spouse, transfer to and administer as part of Fund B of QTIP Trust all or any part of the amounts or assets held as principal of Fund A that are not invested or reinvested in residential or tangible personal property to be held in Fund A. All fiduciary accounting income that was earned, received, accrued, or due on any assets while held in Fund A prior to transfer of those assets to Fund B will remain in Fund A and shall be distributed to Spouse as provided in paragraphs 15.7 and 15.8.

Paragraph 15.7 provides that the trustees have the discretion to pay to or otherwise apply for the benefit of Spouse, as the trustees deem advisable, such amounts of fiduciary accounting income earned on assets other than interests in residential and tangible personal property held in Fund A for Spouse's exclusive personal occupancy and use. The payments of income may be made at such times during each calendar year as the trustees in their discretion shall determine.

Paragraph 15.8 provides that if Spouse is alive on the last day of any calendar year after the death of Taxpayer, the trustees will pay to or apply for the benefit of Spouse the amount by which the fiduciary accounting income earned on the assets in Fund A for that calendar year exceeds all prior payments, applications, and distributions to or for the benefit of Spouse from Fund A during that calendar year.

Paragraph 15.9 provides that fiduciary accounting income shall be determined in accordance with the provisions of State Statute 1, without regard to the provisions of State Statute 1 that allow income to be defined as a unitrust amount.

Fund B of QTIP Trust

Paragraph 15.10 provides that income of Fund B in the calendar year of Taxpayer's death will be a unitrust amount (determined as provided in State Statute 1) equal to

4 percent of \$c and 4 percent of any amount passing under paragraph 11.1 of Revocable Trust (a pecuniary amount). Beginning with the calendar year after Taxpayer's death, the unitrust amount will be 4 percent of any remaining unfunded balance of the initial pecuniary gift of \$c, 4 percent of the amount of any amount passing under paragraph 11.1 of Revocable Trust, and 4 percent of the net fair market value of all other assets of Fund B, other than the interests in Entity, valued on the first day of each taxable year, in accordance with the rules governing determination of fair market value set forth in State Statute 1.

Paragraph 15.11 provides that while Spouse is living, the trustees will permit Spouse the exclusive right to use all assets owned by Entity rent free for so long as any interests in Entity are held directly or indirectly as part of Fund B.

Paragraph 15.12 provides that, as necessary to operate and maintain the assets owned by Entity, the trustees may apply amounts first from income of Fund B, and if income is insufficient, from the principal of Fund B. The trustees may also pay or apply amounts from the principal of Fund B for the purchase or acquisition of assets to be owned by Entity and held for Spouse's exclusive personal use and benefit. If any interests in Entity held as part of Fund B are sold or otherwise disposed of, the proceeds received from the sale or other disposition shall be held and administered as part of Fund B.

Paragraph 15.14 provides that the trustees may make distributions of income from Fund B to or for the benefit of Spouse during each calendar year, whether in regularly recurring installments or otherwise, as the trustees in their discretion shall determine.

Paragraph 15.15 provides that the trustees may invade the principal of Fund B, as the trustees determine, in their discretion, to be necessary for Spouse's health, support, and maintenance, taking into account Spouse's other assets and resources known to the trustees to be reasonably available to Spouse for those purposes.

Paragraph 15.16 provides that if Spouse is alive on the last day of any calendar year after the death of Taxpayer, the trustees will pay to or apply for the benefit of Spouse the amount by which the unitrust amount for that calendar year exceeds all prior payments, applications, and distributions to or for the benefit of Spouse from Fund B during that calendar year.

Paragraph 15.17 provides that beginning with the first calendar year after the year of Taxpayer's death, if all interests in residential and tangible personal property held in Fund A for Spouse's exclusive personal occupancy and use do not have a combined value equal to or greater than \$d on January 1 of that year, the unitrust percentage for that calendar year will be 3 percent. For this purpose, the values of the interests in residential and tangible personal property held for Spouse's exclusive personal occupancy and use shall be the state or local government assessed values of those interests as of January 1, or if not assessed at a fixed value, at current fair market

values as determined by appraisals from qualified and disinterested third-party appraisers as of any date within the six-month period preceding that January 1. The threshold amount will be adjusted each January 1 after Taxpayer's death to reflect any increases or decreases in the cost of living. The unitrust percentage may not otherwise be adjusted notwithstanding the provisions of State Statute 1 that would permit adjustments to the unitrust percentage.

Paragraph 15.18 provides that, except as otherwise provided, the trustees are prohibited from using funds or assets of Fund B to acquire interests in residential and tangible personal property for Spouse's personal use and occupancy and from transferring funds or assets from Fund B to Fund A, except for the expenses associated with the ownership of property held in Fund A for Spouse's exclusive personal use and occupancy.

Paragraph 15.19 provides that upon Spouse's death, the trustees will distribute all remaining assets of QTIP Trust (including both Fund A and Fund B) outright and free of trust to Foundation, provided that it then qualifies as an organization described in §§ 170(c), 2055(a), and 2522(a).

Paragraph 15.20 provides that Taxpayer intends QTIP Trust to be eligible for the marital deduction for federal estate tax purposes. During Spouse's life, the trustees shall administer the trust property so as to produce for Spouse from the date of Taxpayer's death such income and or use of the trust property as is consistent with the value of the trust property and its preservation. Any property that is not productive with respect to income and/or Spouse's personal use must be made productive or be converted into property that is productive within a reasonable time upon Spouse's written demand.

CRUT

Paragraph 16 provides that if Spouse survives Taxpayer and is married to, and not separated from, Taxpayer at the time of Taxpayer's death, the trustees shall fund CRUT with \$e, to be held as a charitable remainder unitrust within the meaning of § 664(d)(2) and Rev. Proc. 2005-56, 2005-2 C.B. 383.

Paragraph 16.2 provides that in each taxable year during the unitrust period, the trustees shall distribute a unitrust amount equal to x percent of the net fair market value of the assets of CRUT valued as of the first day of each taxable year.

Paragraph 16.3 provides that in each taxable year, the trustees shall distribute (i) one-fifth of the unitrust amount to Spouse and (ii) four-fifths of the unitrust amount to Spouse and to Foundation in such shares and proportions as the trustees shall determine in their discretion, except that the trustees shall distribute to Spouse such additional amounts from the four-fifths of the unitrust amount as is necessary to ensure that the amount received by Spouse is not de minimis under the facts and circumstances.

Paragraph 16.4 provides that if Spouse remarries after Taxpayer's death, the trustees shall distribute to Spouse during the period of Spouse's remarriage no further portion of the unitrust amount beyond the one-fifth portion of the unitrust amount that is provided in paragraph 16.3, and any amount of the remaining four-fifths portion of the unitrust amount that is necessary to ensure that the amount received by Spouse is not de minimis.

Paragraph 16.5 provides that the trustees shall not accept additional contributions to CRUT from any source.

Paragraph 16.6 provides that the trustees shall pay the unitrust amount no later than the last day of the calendar year and may pay the unitrust amount at such earlier times during the year, whether in one or more equal or unequal installments, as the trustees in their discretion shall determine.

Paragraph 16.7 provides that the unitrust period will terminate upon the date of Spouse's death and all remaining assets of CRUT will be distributed outright to Foundation, provided it then qualifies as an organization described in §§ 170(c), 2055(a), and 2522(a).

PROVISIONS APPLICABLE TO BOTH QTIP TRUST AND CRUT

Paragraph 20.1 provides that the power to appoint additional or successor and alternate successor trustees or co-trustees may be exercised by a majority of the then-serving individual trustees, or if no individual trustees are then serving, by the institutional trustee then serving.

Paragraph 20.2 provides that there must be either at least two individual trustees serving at all times and at least one of them must be skilled in financial or legal matters, or there must be an institutional trustee. An institutional trustee can serve alone or as co-trustee with one or more individual trustees, but there shall never be more than one institutional trustee serving at any time with respect to any trust.

Paragraph 20.3 provides that if all trustees named as provided above fail or cease to serve, thereafter an institutional trustee will serve alone. In that event, the institutional trustee will be appointed by a court having jurisdiction over the trust.

Paragraph 20.4 provides that neither Spouse, nor any person who is "related or subordinate" to Spouse within the meaning of § 672(c) of the Internal Revenue Code, nor Foundation, nor any other permissible recipient of distributions of income or principal during the term of either QTIP Trust or CRUT or upon the termination of either such trust may ever serve as a trustee of either QTIP Trust or CRUT, or have any power to remove a trustee or to appoint additional or successor trustees. Each trustee

separately and all trustees collectively are prohibited from exercising any power to vest the principal or the income of the QTIP Trust or CRUT in any trustee, and from applying any part of the principal or the income of QTIP Trust or CRUT in satisfaction of any trustee's support or other legal obligations.

Paragraph 27.7 of Revocable Trust provides that if there is a dispute or controversy of any nature between or among the trustees and beneficiaries involving any aspect of Revocable Trust or its administration, the parties in dispute will submit the matter to mediation or some other method of alternative dispute resolution selected by them, and if that procedure fails to resolve the dispute, to binding arbitration conducted in accordance with State Statute 2.

REQUEST FOR RULINGS

1. Assets and amounts transferred to QTIP Trust upon Taxpayer's death will be QTIP to the extent a QTIP election is made under § 2056(b)(7) and the corresponding regulations.
2. A transfer by the trustees of QTIP Trust from Fund A to Fund B of (a) any or all of the initial pecuniary gift to Fund A, (b) any reinvestments of the pecuniary gift to Fund A, and (c) any net proceeds of sale from residential or tangible personal property held in Fund A that are not reinvested to be held in Fund A for Spouse's exclusive personal occupancy and use, will not be a disposition of a qualifying income interest for life in any property under § 2519 and the corresponding regulations.
3. No person will be treated as the owner of any portion of the trust estate of CRUT under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code.
4. CRUT will not be prevented from qualifying as a CRUT under § 664(d)(2) and the corresponding regulations by the power of the trustees of the CRUT to pay the unitrust amount during each calendar year in one or more equal or unequal installments, as the trustees in their discretion shall determine, but in any event not later than the last day of each calendar year.
5. CRUT will not be prevented from qualifying as a CRUT under § 664(d)(2) and the corresponding regulations by the power of the trustees of CRUT to allocate a portion of the unitrust amount between Spouse and Foundation.
6. CRUT will not be prevented from qualifying as a CRUT under § 664(d)(2) and the corresponding regulations by the provision limiting distributions from the CRUT to Spouse to one-fifth of the unitrust amount during any period when

Spouse is legally married, to the extent such amount is not de minimis under the facts and circumstances.

7. In calculating Taxpayer's taxable estate, the entire value of the assets of CRUT included in Taxpayer's estate will be deductible because of the combined charitable and marital deductions available under §§ 2055(a) and 2056(b)(8).
8. The provision in Revocable Trust requiring that any dispute or controversy of any nature involving any aspect of the administration of QTIP Trust or CRUT be resolved by binding arbitration will not prevent the trust estate of QTIP Trust from being QTIP to the extent a QTIP election is made under § 2056(b)(7), and will not prevent CRUT from qualifying as a CRUT under § 664(d)(2).

RULING 1: QTIP ISSUE

Section 2056(a) of the Internal Revenue Code provides that for purposes of the tax imposed by § 2001, the value of the taxable estate shall, except as limited by § 2056(b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(1) provides, in pertinent part, that no deduction shall be allowed under § 2056(a) where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail, and on such termination, the property passes to a person other than the surviving spouse or the spouse's estate.

Section 2056(b)(7)(A) allows an estate tax marital deduction for qualified terminable interest property (QTIP).

Under § 2056(b)(7)(B)(i), the term "qualified terminable interest property" means property which passes from the decedent, in which the surviving spouse has a qualifying income interest for life, and to which the QTIP election under § 2056(b)(7)(B)(v) applies.

Section 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, and no person has a power to appoint any part of the property to any person other than the surviving spouse.

Section 20.2056(b)-7(d)(2) of the Estate Tax Regulations provides that the principles of

§ 20.2056(b)-5(f), relating to whether the spouse is entitled for life to all of the income from the entire interest or a specific portion of the entire interest, apply in determining whether the surviving spouse is entitled for life to all of the income from the property regardless of whether the interest passing to the spouse is in trust.

Section 20.2056(b)-5(f)(1) provides that if an interest is transferred in trust, the surviving spouse is “entitled for life to all of the income from the entire interest or a specific portion of the entire interest,” if the effect of the trust is to give her substantially that degree of beneficial enjoyment of the trust property during her life which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust. In addition, the surviving spouse shall be entitled for life to all of the income from the entire interest or a specific portion of the entire interest if the spouse is entitled to income as determined by applicable local law that provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust and that meets the requirements of §1.643(b)-1 of the Income Tax Regulations.

Section 1.643(b)-1 of the Income Tax Regulations provides, in part, that an allocation of amounts between income and principal pursuant to applicable local law will be respected if local law provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust for the year, including ordinary and tax-exempt income, capital gains, and appreciation. For example, a state statute providing that income is a unitrust amount of no less than 3 percent and no more than 5 percent of the fair market value of the trust assets, whether determined annually or averaged on a multiple year basis, is a reasonable apportionment of the total return of the trust.

Section 20.2056(b)-5(f)(4) provides, in part, that provisions granting administrative powers to the trustee will not have the effect of disqualifying an interest passing in trust unless the grant of powers evidences the intention to deprive the surviving spouse of the beneficial enjoyment required by the statute. For example, the power to retain trust assets which consist substantially of unproductive property will not disqualify the interest if the applicable rules for the administration of the trust require, or permit the spouse to require, that the trustee either make the property productive or convert it within a reasonable time. Further, a power to retain a residence or other property for the personal use of the spouse will not disqualify the interest passing in trust.

State Statute provides that the grantor of a trust may create an express total return unitrust which will become effective as provided in the trust document without requiring a conversion of an income trust to a total return unitrust under the provisions of State Statute. An express total return unitrust created by the grantor of the trust shall be treated as a unitrust under State Statute only if the terms of the trust document contain all of the following provisions: (a) that distributions from the trust will be unitrust amounts and the manner in which the unitrust amount will be calculated and the method in which the fair market value of the trust will be determined; (b) the percentage to be

used to calculate the unitrust amount, provided the percentage used is not greater than 5 percent nor less than 3 percent; (c) the method to be used in determining the fair market value of the trust; and (d) which assets, if any, are to be excluded in determining the unitrust amount.

We note that under the terms of QTIP Trust, no person other than Spouse will have a right to income or corpus of QTIP Trust. In each year of QTIP Trust, the trustees will be required to pay to or for the benefit of Spouse any income earned on trust assets or, with respect to the assets of Fund B other than the interest in Entity, a unitrust amount of 3 or 4 percent, as authorized under local law. In each year of QTIP Trust, while Spouse is still living, Spouse will have the exclusive right to occupy and use, rent free, all real property and tangible personal property held in Fund A and in Fund B, whether held directly or indirectly as an asset of Entity. Spouse also will have the right to direct the trustees to make any unproductive property productive and to convert any non-income or low-income-producing property. Although the trustees will have the authority to sell any property of Fund A during Spouse's lifetime, the proceeds of any sale cannot be transferred by the trustees outside the trust, but rather must be (i) reinvested in other property, (ii) held as principal of Fund A, or (iii) transferred to and held as principal of Fund B. In each case, Spouse will be considered to have a right to income with respect to the proceeds of the sale.

Based on the facts provided and representations made, we conclude that Spouse will have a qualifying income interest for life in QTIP Trust under § 2056(b)(7)(B)(i). As long as Taxpayer's estate makes a valid QTIP election under § 2056(b)(7)(B)(i), the property passing to QTIP Trust upon Taxpayer's death will be "qualified terminable interest property."

RULING 2: § 2519 DISPOSITION ISSUE

Section 2501(a)(1) provides that a tax is imposed for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2511(a) provides that subject to the limitations of chapter 12, the tax imposed by § 2501 applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 2519(a) provides that any disposition of all or part of a qualifying income interest for life in any property to which this section applies is treated as a transfer of all interests in the property other than the qualifying income interest. Section 2519(b) provides that § 2519(a) applies to any property if a deduction was allowed with respect to the transfer of such property to the donor under § 2056(b)(7).

Section 25.2519-1(f) provides that the conversion of qualified terminable interest property into other property in which the donee spouse has a qualifying income interest

for life is not treated as a disposition of the qualifying income interest. Thus, the sale and reinvestment of assets of a trust holding qualified terminable interest property is not a disposition of the qualifying income interest, provided that the donee spouse continues to have a qualifying income interest for life in the trust after the sale and reinvestment. Similarly, the sale of real property in which the spouse possesses a legal life estate and thus meets the requirements of qualified terminable interest property, followed by the transfer of the proceeds into a trust which also meets the requirements of qualified terminable interest property, or by the reinvestment of the proceeds in income producing property in which the donee spouse has a qualifying income interest for life, is not considered a disposition of the qualifying income interest. On the other hand, the sale of qualified terminable interest property, followed by the payment to the donee spouse of a portion of the proceeds equal to the value of the donee spouse's income interest, is considered a disposition of the qualifying income interest.

The term "disposition," as used in § 2519, applies broadly to circumstances in which the surviving spouse's right to receive the income is relinquished or otherwise terminated, by whatever means. See H. R. Rep. No. 97-201, at 161 (1981).

Based on the facts provided and the representations made, we conclude that the transfer to Fund B of the initial pecuniary amount of Fund A, of any reinvestments of the pecuniary amount of Fund A, or any net proceeds of sale from property held in Fund A will not be considered a disposition of a qualifying income interest for life in any property under § 2519. See § 25.2519-1(f).

RULING 3: ISSUE UNDER SUBPART E ("TREATED AS THE OWNER")

Section 1.664-1(a)(4) provides that in order for a trust to be a charitable remainder trust, it must meet the definition of and function exclusively as a charitable remainder trust from the creation of the trust. Solely for purposes of § 664 and the regulations thereunder, the trust will be deemed to be created at the earliest time that neither the grantor nor any other person is treated as the owner of the entire trust under subpart E, part 1, subchapter J, chapter 1, subtitle A, but in no event prior to the time property is first transferred to the trust. For purposes of the preceding sentence, neither the grantor nor the grantor's spouse shall be treated as the owner of the trust under subpart E merely because the grantor or the spouse is named as a recipient.

Section 671 provides the general rule that, in cases in which the grantor or another person is regarded as the owner of any portion of a trust, there shall be included in computing his taxable income and credits those items of income, deductions, and credits against tax on the trust that are attributable to that portion of the trust to the extent that such items would be taken into account in computing the taxable income and credits against the tax of an individual.

Sections 673 through 678 of subpart E, part 1, subchapter J, specify the circumstances under which the grantor or another person is regarded as the owner of a portion of a trust.

Section 674(a) provides the general rule that the grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both, without approval or consent of any adverse party.

Section 674(c) provides that § 674(a) shall not apply to a power solely exercisable (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor, and no more than half of whom are related or subordinate parties who are subservient to the wishes of the grantor, to apportion the income within a class of beneficiaries or to pay corpus to a class of beneficiaries. See Rev. Rul. 77-73, 1977-1 C.B. 175.

Section 1.674(c)-1 provides that the powers to which § 674(c) applies are powers (a) to distribute, apportion, or accumulate income to or for a beneficiary or beneficiaries, or to, for, or within a class of beneficiaries, or (b) to pay out corpus to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries). In order for such a power to fall within the exception of § 674(c) it must be exercisable solely (without the approval or consent of any other person) by a trustee or trustees, none of whom is the grantor and no more than half of whom are related or subordinate parties who are subservient to the wishes of the grantor.

Section 678(a) provides, in general, that a person other than a grantor shall be treated as the owner of any portion of a trust with respect to which (1) such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, or (2) such person has previously partially released or otherwise modified such a power and after the release or modification retains such control as would, within the principles of §§ 671 to 677, inclusive, subject a grantor of a trust to treatment as the owner thereof.

Based on the facts provided and representations made, we conclude that the provisions of Revocable Trust will prohibit Spouse, any person who is related or subordinate to Spouse, Foundation, and any other permissible recipient of distributions of income or principal during the term of CRUT from ever serving as a trustee, and from having any power to remove a trustee or to appoint additional or successor trustees. We also conclude that the provisions of Revocable Trust will prohibit all trustees (acting separately or collectively) from having any power to vest the principal or the income of CRUT in any trustee, and from applying any part of the principal or the income of CRUT in satisfaction of any trustee's support or other legal obligations. Accordingly, a person other than the grantor will not be treated as an owner under § 678. Under the dispositive provisions of Revocable Trust, no portion of CRUT will be treated as being

owned by Taxpayer under §§ 673 through 677. No person, therefore, will be treated as the owner of any portion of CRUT under subpart E, part 1, subchapter J, chapter 1, subtitle A of the Code.

RULINGS 4 THROUGH 6: CRUT ISSUES

Pursuant to section 4.01(37) of Rev. Proc. 2010-3, 2010 I.R.B. 117, the Internal Revenue Service (Service) ordinarily will not rule on whether a charitable remainder annuity trust or unitrust qualifies as a charitable remainder trust within the meaning of § 664(d). In lieu of seeking the Service's advance approval of CRUT, Taxpayer is directed to follow the sample CRUT provisions outlined in Rev. Proc. 2005-56, 2005-2 C.B. 383. By following the models contained in Rev. Proc. 2005-56, Taxpayer can be assured that the Service will recognize a trust as meeting all of the requirements of a qualified CRUT under § 664(d)(2) provided that the trust operates in a manner that is consistent with the terms of the trust instrument and provided the trust is a valid trust under applicable local law. In the present case, CRUT contains provisions not addressed in Rev. Proc. 2005-56. Therefore, we will rule on whether those provisions disqualify CRUT as a qualified CRUT under § 664(d)(2).

Section 664(d)(2) provides that for purposes of § 664, a charitable remainder unitrust is a trust—

(A) from which a fixed percentage (which is not less than 5 percent nor more than 50 percent) of the net fair market value of its assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in § 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals,

(B) from which no amount other than the payments described in § 664(d)(2)(A) and other than qualified gratuitous transfers described in § 664(d)(2)(C) may be paid to or for the use of any person other than an organization described in § 170(c),

(C) following the termination of the payments described in § 664(d)(2)(A), the remainder interest in the trust is to be transferred to, or for the use of, an organization described in § 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employer securities, all or a part of such securities are to be transferred to an employee stock ownership plan in a qualified gratuitous transfer as defined by § 664(g), and

(D) with respect to each contribution of property to the trust, the value (determined under § 7520) of such remainder interest in such property is

at least 10 percent of the net fair market value of such property as of the date such property is contributed to the trust.

Section 664(f) provides that if a trust would, but for a qualified contingency, meet the requirements of § 664(d)(1)(A) or § 664(d)(2)(A), such trust shall be treated as meeting such requirements. For purposes of determining the amount of any charitable contribution (or the actuarial value of any interest), a qualified contingency shall not be taken into account. The term “qualified contingency” means any provision of a trust which provides that, upon the happening of a contingency, the payments described in § 664(d)(1)(A) or 664(d)(2)(A) will terminate not later than such payments would otherwise terminate under the trust.

Section 1.664-1(a)(1)(i) provides that, generally, a charitable remainder trust is a trust that provides for a specified distribution, at least annually, to one or more beneficiaries, at least one of which is not a charity, for the life or for a term of years, with an irrevocable remainder interest to be held for the benefit of, or paid over to, charity. In the case of a charitable remainder unitrust, the specified distribution to be paid at least annually must be a fixed percentage which is not less than 5 percent of the net fair market value of the trust assets, valued annually.

Section 1.664-3(a)(1)(i) requires the governing instrument to provide that the trust will pay not less often than annually a fixed percentage of the net fair market value of the trust assets determined annually to a person or persons described in § 1.664-3(a)(3) for each taxable year of the period specified in § 1.664-3(a)(5).

Section 1.664-3(a)(1)(ii) provides that the fixed percentage may be expressed either as a fraction or as a percentage and must be payable each year in the period specified in § 1.664-3(a)(5). A percentage is fixed if the percentage is the same either as to each recipient or as to the total percentage payable each year of such period.

Section 1.664-3(a)(2)(i) requires that the fixed percentage described in § 1.664-3(a)(1)(i) with respect to all beneficiaries taken together must not be less than 5 percent.

Section 1.664-3(a)(3)(i) provides that the amount described in § 1.664-3(a)(1) must be payable to or for the use of a named person or persons, at least one of which is not an organization described in § 170(c). If the amount described in § 1.664-3(a)(1) is to be paid to an individual or individuals, all such individuals must be living at the time of creation of the trust. A named person or persons may include members of a named class except in the case of a class which includes any individual, all such individuals must be alive and ascertainable at the time of the creation of the trust unless the period for which the unitrust amount is to be paid to such class consists solely of a term of years.

Section 1.664-3(a)(3)(ii) provides that a trust is not a charitable remainder unitrust if any person has the power to alter the amount to be paid to any named person other than an organization described in § 170(c) if such power would cause any person to be treated as the owner of the trust, or any portion thereof, if subpart E, part 1, subchapter J, chapter 1, subtitle A were applicable to such trust. For example, the governing instrument may not grant the trustee the power to allocate the fixed percentage among members of a class unless such power falls within one of the exceptions to § 674(a).

Section 1.664-3(a)(4) provides that no amount other than the payment of the unitrust amount may be paid to or for the use of any person other than an organization described in § 170(c). The governing instrument may provide that any amount other than the unitrust amount shall be paid (or may be paid in the discretion of the trustee) to an organization described in § 170(c) provided that, in the case of distributions in kind, the adjusted basis of the property distributed is fairly representative of the adjusted basis of the property available for payment on the date of payment.

Section 1.664-4(a)(3) provides, in part, that in determining the fair market value of a remainder interest in a charitable remainder unitrust, if the governing instrument does not prescribe when the distribution is to be made during the period for which the payment is made, the distribution is considered payable on the first day of the period for which the payment is made.

With respect to the fourth ruling request, § 1.664-3(a)(1)(i) requires that the unitrust amount be paid not less often than annually to the unitrust beneficiary or beneficiaries. Section 1.664-4(a)(3) contemplates a charitable remainder unitrust in which the timing of the unitrust payment each year is not specified in the governing instrument. In the instant case, Paragraph 16.6 of Revocable Trust requires the trustees of CRUT to distribute the unitrust amount to the unitrust recipients on an annual basis, but provides the trustees with discretion to pay the unitrust amount during each calendar year in one or more equal or unequal installments, but in any event not later than the last day of each calendar year. Based on the foregoing, we conclude that Paragraph 16.6, which gives the trustees the discretion to pay the annual unitrust amount in one or more equal or unequal payments, will not preclude CRUT from qualifying as a charitable remainder trust under § 664(d)(2).

With respect to the fifth ruling request, we note that Paragraph 16.3 provides that in each taxable year during the unitrust period, the trustees shall distribute one-fifth of the unitrust amount to Spouse and four-fifths of the unitrust amount to Spouse and to Foundation in such shares and proportions as the trustees shall determine in their discretion, except that the trustees shall distribute to Spouse such additional amounts from the four-fifths of the unitrust amount as is necessary to ensure that the amount received by Spouse is not de minimis under the facts and circumstances.

It is well-established that the unitrust amount can be split between a charitable and noncharitable beneficiary. See §§ 1.664-1(a)(1)(i) and 1.664-3(a)(3)(i); § 5.02(1) of Rev. Proc. 2005-56. As for whether a portion of the unitrust amount can be allocated between the charitable and noncharitable beneficiary, in the trustees' discretion, § 1.664-3(a)(3)(ii) generally prohibits granting a power to alter amounts paid to recipients if the power would cause any person to be treated as the owner of the trust, or any portion thereof, if subpart E, part 1, subchapter J, chapter 1, subtitle A were applicable to the trust. Section 1.664-3(a)(3)(ii) further provides that the governing instrument may not grant the trustee the power to allocate the fixed percentage among members of a class unless such power falls within one of the exceptions to § 674(a). As noted above, § 674(c) provides an exception to the general rule of § 674(a) with regard to certain powers to apportion trust income or principal among a class of beneficiaries. Thus, a provision that gives an independent trustee the power to allocate the unitrust amount among the charitable and noncharitable beneficiaries on an annual basis is not inconsistent with the provisions of the Code and regulations governing charitable remainder trusts, provided the governing instrument requires that a portion of the unitrust amount so paid is not de minimis under the facts and circumstances for each year.

Based on the foregoing, we conclude that Paragraph 16.3 of Revocable Trust that gives the trustees the power to allocate a portion of the unitrust amount among charitable and noncharitable beneficiaries will not preclude CRUT from qualifying as a charitable remainder unitrust under § 664(d)(2).

With respect to the sixth ruling request, we note that Paragraph 16.4 of Revocable Trust limits the portion of the unitrust amount payable to Spouse to one-fifth of the unitrust amount during the period of Spouse's remarriage (and any additional portion necessary to ensure the amount received by Spouse is not de minimis). The provision is similar in concept to a qualified contingency, except that upon the occurrence of the contingency, payment of the unitrust amount does not terminate. The unitrust amount will continue to be paid annually, except that, upon Spouse's remarriage, the trustees' power to allocate the four-fifths portion of the unitrust amount between Spouse and Foundation terminates. During the period of Spouse's remarriage, the trustees are required to pay one-fifth of the unitrust amount to Spouse and four-fifths of the unitrust amount to Foundation (except that any portion of the four-fifths portion of the unitrust amount that is necessary to ensure the amount received by Spouse is not de minimis will be paid to Spouse). Based on the foregoing, we conclude that Paragraph 16.4 of Revocable Trust that limits the portion of the unitrust amount payable to Spouse during the period of her remarriage will not preclude CRUT from qualifying as a charitable remainder unitrust under § 664(d)(2).

RULING 7: MARITAL AND CHARITABLE DEDUCTION ISSUE

Section 1.664-3(c) indicates that § 1.664-4 provides the rules relating to the calculation of the fair market value of the remainder interest of a charitable remainder unitrust.

Section 1.664-4(a) provides that for purposes of §§ 170, 2055, 2106, and 2522, the fair market value of a remainder interest in a charitable remainder unitrust is its present value determined under § 1.664-4(d), to be computed, in part, on the assumption that the amount described in § 1.664-3(a)(1)(i)(a) is distributed in accordance with the payout sequence described in the governing instrument. Under § 1.664-4(a)(3), if the governing instrument does not prescribe when the distribution is made during the period for which the payment is made, the distribution is considered payable on the first day of the period for which the payment is made.

Section 1.664-4(c) provides that any claim for a deduction on any return for the value of a remainder interest in a charitable remainder unitrust must be supported by a full statement attached to the return showing the computation of the present value of such interest.

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2055(a) provides that for purposes of the tax imposed by § 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers to or for the use of charitable, religious, scientific, literary, or educational organizations described in § 2055(a)(1)-(a)(4).

Section 20.2055-2(e)(1) provides that where an interest in property passes or has passed from the decedent for charitable purposes and an interest in the same property passes or has passed from the decedent for private purposes (for less than an adequate and full consideration in money or money's worth) no deduction is allowed under § 2055 for the value of the interest which passes or has passed for charitable purposes unless the interest in property is a deductible interest described in § 20.2055-2(e)(2).

Section 20.2055-2(e)(2)(v) provides, in part, that a remainder interest in a trust that is a charitable remainder unitrust, as defined, in § 664(d)(2) and (3) and § 1.664-3, is a deductible interest.

Section 20.2055-2(e)(2)(vii) provides, in part, that a unitrust interest is a deductible interest. For purposes of § 20.2055-2(e)(2)(vii), the term "unitrust interest" means the right pursuant to the instrument of transfer to receive payment, not less often than annually, of a fixed percentage of the net fair market value, determined annually, of the property which funds the unitrust interest.

Section 2056(a) provides that for purposes of the tax imposed by § 2001, the value of the taxable estate shall, except as limited by § 2056(b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(1) provides, in pertinent part, that no deduction shall be allowed under § 2056(a) where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail, and on such termination, the property passes to a person other than the surviving spouse or the spouse's estate.

Section 2056(b)(8) provides that, if the surviving spouse of a decedent is the only non-charitable beneficiary of a qualified charitable remainder trust, then § 2056(b)(1), which disallows a deduction for certain terminable interests passing to a surviving spouse, shall not apply to any interest in such trust that passes or has passed from the decedent to the surviving spouse.

Section 2056(b)(8)(B)(iii) provides that the term “qualified charitable remainder trust” means a charitable remainder annuity trust or charitable remainder unitrust described in § 664.

Section 20.2056(b)-8(a)(1) provides, in part, that if the surviving spouse of the decedent is the only noncharitable beneficiary of a charitable remainder unitrust described in § 664, § 2056(b)(1) does not apply to the interest in the trust that is transferred to the surviving spouse. Thus, the value of the unitrust interest passing to the spouse qualifies for a marital deduction under § 2056(b)(8) and the value of the remainder interest qualifies for a charitable deduction under § 2055.

In the legislative history to the Economic Recovery Tax Act of 1981, the House Ways and Means Committee stated:

If an individual transfers property outright to charity, no transfer taxes generally are imposed. Similarly, under the unlimited marital deduction provided in the committee bill, no tax generally will be imposed on an outright gift to the decedent's spouse. As a result, the committee finds no justification for imposing transfer taxes on a transfer split between a spouse and a qualifying charity. Accordingly, the bill provides a special rule for transfers of interests in the same property to a spouse and a qualifying charity.

Under the bill, if an individual creates a qualified charitable remainder annuity trust or a qualified charitable remainder unitrust, and the only

noncharitable beneficiaries are donor and his spouse, the disallowance rule for terminable interests does not apply. Therefore, the individual will receive a charitable deduction (under secs. 2055 or 2522) for the amount of the remainder interest and a marital deduction (under secs. 2056 or 2523) for the value of the annuity or unitrust interest; no transfer tax will be imposed.

H.R. Rep. No. 97-201, at 162 (1981).

In the instant case, the entire value of the assets distributed to CRUT as of Taxpayer's date of death will be included in Taxpayer's estate. Assuming CRUT satisfies the requirements of § 664, the value of the charitable remainder interest will qualify for a charitable deduction under § 2055(e)(2)(A) because the remainder interest is in a charitable remainder unitrust described in § 664. Assuming CRUT satisfies the requirements of § 664, the value of Spouse's unitrust interest qualifies for a marital deduction under § 2056(b)(8). However, in this case, the value of Spouse's unitrust interest for purposes of determining the deduction available under § 2056(b)(8) is unclear as only a portion of the unitrust amount is required to be paid to Spouse under the instrument, with a larger portion of the unitrust amount payable to either Spouse or Foundation, as the trustees in their discretion may annually decide. In light of the legislative history noted above and based on the facts provided and representations made, we conclude that where Taxpayer establishes a testamentary charitable remainder unitrust for one measuring life in which the surviving spouse is the only noncharitable beneficiary, the estate tax marital deduction under § 2056(a) will completely offset the value of the assets distributed to CRUT as of Taxpayer's date of death, after deducting the value of the remainder interest qualifying for a charitable deduction under § 2055(a).

RULING 8: ALTERNATIVE DISPUTE RESOLUTION ISSUE

Section 20.2056(c)-2(d)(2) provides that if as a result of a controversy involving the decedent's will, or involving any bequest or devise thereunder, a property interest is assigned or surrendered to the surviving spouse, the interest so acquired will be regarded as having "passed from the decedent to the surviving spouse" only if the assignment or surrender was a bona fide recognition of enforceable rights of the surviving spouse in the decedent's estate. Such a bona fide recognition will be presumed where the assignment or surrender was pursuant to a decision of a local court upon the merits in an adversary proceeding following a genuine and active contest. If the assignment or surrender was pursuant to a decree rendered by consent, or pursuant to an agreement not to contest the will or not to probate the will, it will not necessarily be accepted as a bona fide evaluation of the rights of the spouse.

In Ahmanson Foundation v. United States, 674 F.2d 761 (9th Cir. 1981), the court held that property distributed to a spouse pursuant to a compromise settlement will be

treated as passing from the decedent for marital deduction purposes, only if the distribution represents a good faith settlement of an enforceable claim. Relying on Commissioner v. Estate of Bosch, 387 U.S. 456 (1967), the court stated:

Either a good faith settlement or a judgment of a lower state court must be based on an enforceable right under state law properly interpreted, in order to qualify as 'passing' pursuant to the estate tax marital deduction.

Ahmanson Foundation, 674 F.2d at 775.

State Statute 2 allows two or more opposing parties who are involved in a civil dispute to agree in writing to submit the controversy to voluntary binding arbitration, or voluntary trial resolution, in lieu of litigation of the issues involved, prior to or after a lawsuit has been filed. Further, State Statute 2 provides rules relating to voluntary binding arbitration or voluntary trial resolution, such as the procedures for appointing one or more qualified arbitrators, the submission of the request with the court or with the trial resolution judge, as the case requires, and how a final decision is rendered by the arbitrators or the trial resolution judges.

As noted in the facts above, Paragraph 27.7 of Revocable Trust provides that if there is a dispute or controversy of any nature between or among the trustees and beneficiaries involving any aspect of this trust or its administration, the parties in dispute will submit the matter to alternative dispute resolution and if that procedure fails to resolve the dispute, to binding arbitration conducted in accordance with State Statute 2.

Based on the foregoing, we conclude that inclusion of Paragraph 27.7 will not prevent CRUT from qualifying as a charitable remainder unitrust that meets the requirements of § 664, nor will it prevent the property passing to QTIP Trust from qualifying as qualifying terminable interest property. However, we note that any final decision reached in voluntary binding arbitration or volunteer trial resolution is subject to the scrutiny of the Service to determine if the decision is based on an enforceable right under state law properly interpreted.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

James F. Hogan
Branch Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)